

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HARRY D. POTTIOS,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

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§ No. 35, 2011

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§ Court Below—Superior Court

§ of the State of Delaware

§ in and for New Castle County

§ Cr. ID No. 0711017614

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Submitted: August 22, 2011

Decided: August 26, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 26th day of August 2011, it appears to the Court that:

(1) The defendant-appellant, Harry D. Pottios, filed an appeal from the Superior Court's January 6, 2011 order denying his motion for correction of his sentence for Burglary in the Third Degree. In its answering brief, the State agreed with Pottios that the matter should be remanded to the Superior Court to give him credit for 120 days of Level V time previously served. This Court remanded the matter to the Superior Court for correction of Pottios's sentence. On June 21, 2011, the Superior Court corrected Pottios's sentence to give him credit for an additional 120 days of Level V time.

(2) On July 28, 2011, the Clerk issued a notice to show cause directing Pottios to show cause why his appeal should not be dismissed as moot in light of the Superior Court's June 21, 2011 order. On August 10, 2011, Pottios responded to the notice to show cause stating that his appeal was not moot because he was entitled to an additional 12 days of Level V credit. The State filed a reply to Pottios's response on August 22, 2011. In the response, the State agrees with Pottios that he is entitled to that additional credit.

(3) Because it appears that Pottios is entitled to an additional 12 days of Level V credit, this matter will be remanded to the Superior Court for application of that credit time to Pottios's sentence.

NOW, THEREFORE, IT IS ORDERED that this matter is hereby remanded to the Superior Court for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice